REDACTED DECISION -- 06-233 FN -- BY ROBERT W. KIEFER, JR., ALJ -- SUBMITTED for DECISION on MARCH 19, 2006 -- ISSUED on SEPTEMBER 19, 2007

SYNOPSIS

BUSINESS FRANCHISE TAX -- ALLOWANCE PURSUANT TO W. VA. CODE § 11-23-3(b)(2)(E)(i)(I) -- LOW INCOME HOUSING TAX CREDITS -- Low-income housing tax credits issued pursuant to Section 42 of the Internal Revenue Code (26 U.S.C. § 42) are neither securities nor obligations as described in W. Va. Code § 11-23-3(b)(2)(E)(i)(I), or the legislative rules promulgated pursuant thereto.

BUSINESS FRANCHISE TAX -- ALLOWANCE PURSUANT TO W. VA. CODE § 11-23-3(b)(2)(E)(i)(I) -- LOW INCOME HOUSING TAX CREDITS -- The low-income housing tax credits issued to the Petitioner pursuant to Section 42 of the Internal Revenue Code (26 U.S.C. § 42), which were distributed to its limited partners in exchange for funds used to capitalize the partnership, are no longer owned by the Petitioner and, as such, can no longer be considered part of the capital of the Petitioner

BUSINESS FRANCHISE TAX -- ALLOWANCE PURSUANT TO W. VA. CODE § 11-23-3(b)(2)(E)(i)(III) -- INVESTMENTS OR LOANS PRIMARILY SECURED BY MORTGAGES OR DEEDS OF TRUST ON RESIDENTIAL PROPERTY -- Loans to the Petitioner secured by deeds of trust on its property are liabilities netted against its assets in determining its capital, not investments, loans or other assets owned by the Petitioner which are secured by deeds of trust on the property of debtors, and therefore are not entitled to the allowance permitted by W. Va. Code § 11-23-3(b)(2)(E)(i)(III).

FINAL DECISION

A tax examiner with the Field Auditing "Division" of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent") conducted an audit of the books and records of the Petitioner. Thereafter, on January 25, 2006, the Director of this Division issued a business franchise tax assessment against the Petitioner. The assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 23 of the West Virginia Code. The assessment was for the period of January 1, 2002, through December 31, 2004, for tax in the amount of $_____ and interest in the amount of $_____, computed through February 28, 2006, for a total assessed tax liability

of $_____. Written notice of this assessment was served on the Petitioner on January 27, 2006.

Thereafter, by delivery dated March 23, 2006, and received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on March 24, 2006, the Petitioner timely filed a petition for reassessment. W. Va. Code §§ 11-10A-8(1) [2002] & 11-10A-9(a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

FINDINGS OF FACT

1. The Petitioner is a limited partnership formed solely for the purpose of providing investment in low- to moderate-income housing utilizing credits issued pursuant to 26 U.S.C. § 42.

2. The Petitioner's witness has been a CPA since 1978, and is licensed to practice in the States of West Virginia and a certain adjoining state.

3. The witness testified that low income housing tax credits under Section 42 of the Internal Revenue Code (26 U.S.C. § 42) were created by the Tax Reform Act of 1986 for the purpose of encouraging investment in qualified low income buildings.

4. The witness testified that the tax credits were created as an incentive to private developers and investors to invest in low-income housing.

5. The witness further testified that Congress believed that without the credits private developers and investors would not provide adequate low-income housing, because such housing typically does not generate sufficient profit to warrant the investment.

6. Limited partnerships utilizing these low-income housing credits are generally financed through of a combination of tax credits and conventional financing.

7. Usually about seventy per cent (70%) is financed through tax credits and thirty per cent (30%) through conventional financing.

8. This financing scheme allows for rental to tenants in the low- to moderate-income range and greatly increases the availability of housing to individuals in these income ranges.

9. In 2006, the tax credits allocated to the United States and its territories was $556,000,000.

10. The credits are allocated to states based on population. More recently, states with small populations have been allocated a minimum number of credits, giving them more credits per capita than larger states.

11. In West Virginia, the tax credits are distributed by the West Virginia Housing Authority.

12. The West Virginia Housing Authority distributes the tax credits allocated to the State of West Virginia after entertaining project bids from real estate developers.

13. The West Virginia Housing Authority allocates the tax credits to limited partnerships, including the Petitioner, based on certain criteria.

14. After tax credits are awarded to a limited partnership, the general partner approaches syndicators who market the tax credits, which may be sold by the limited partnership.

15. The proceeds from the sale of the tax credits are then incorporated into the financing of the projects, along with more conventional types of financing, which also has a component of federal tax-exempt financing in the form of loan by a conventional lender, with a subsidized interest rate through the Federal Home Loan Bank.

16. The bank that issues the funds collateralized by the Petitioner's apartment complex usually obtains funds from the Federal Home Loan Bank, in the form of a 30-year amortization fixed interest rate loan, with a balloon payment due in 15 years.

17. A fixed interest rate loan is necessary and helps to stabilize the complex because the rental income derived from the facility is below market rental income.

18. After the tax credits are syndicated, other financing obtained and all documents prepared for construction of the project, an important requirement is that the project be set up to comply with 26 U.S.C. § 42 for the next fifteen (15) years.

19. Each project is limited to use as residential property for low- to moderate-income tenants for the fifteen-year period.

20. Each project must ensure that the tenants are certified as satisfying the requirements respecting income in the low- to moderate-income range.

21. Exemplary of the restrictive covenants applicable to all projects of this nature are the restrictive covenants applicable to the Petitioner. *See* Petitioners' Exhibit No. 3.

22. The cap on rent severely restricts income.

23. The limited rental income is the reason for the tax credit program and the reason that the Federal Home Loan Banks provide money at less than market interest rates.

24. For the first fifteen years of each project's existence, the owner is required to maintain this general capital structure.

25. After fifteen years, at the end of the compliance period, the project is usually sold or rehabilitated.

26. The project can be rehabilitated into another tax credit financing program or may be converted into a conventional project.

27. Generally, the limited partners, who own virtually the entire project, have their interests in the project bought out.

28. Nothing in the issuance of these tax credits makes the federal government a guarantor of the financing for these types of projects.

29. The witness testified that, with traditional “market rent apartment complexes,” the owner may charge whatever rent the market will bear.

30. The witness testified that, with “low-income housing tax credit property,” the owner is capped in amount of rent it can charge tenants due to federally mandated guidelines.

31. All of the Petitioner’s assets are related to the low-income housing tax credits program.

32. All assets are related to the operation of the apartment complex, and all liabilities are obligated to the apartment complex.

33. Exemplary of the financing of this type of project, the Petitioner tendered Petitioners’ Exhibit Number 4, which contrasts the initial equity positions of a “market rent apartment complex” with a “low-income housing tax credit property,” without the allowances to which the Petitioner contends it is entitled.

34. With a traditionally financed “market rent apartment complex,” the lender will usually require the owner to contribute capital to the project, usually in the form of land value and funds, in the amount of ten percent (10%) of the total cost of the project, resulting in a net equity in the same amount.

35. Traditionally, ninety percent (90%) is funded through borrowing, often with the owners personally guaranteeing the loans used to finance the project.

36. Using “tax credit funding,” the capital contributed to the project is the money that is paid by the limited partners to purchase the tax credits allocated to the Petitioner by the West Virginia Housing Authority.

37. The amount that is not financed through sale of the tax credits is financed through borrowed funds, as more particularly described above.

38. For the Petitioner, the capital contributed to purchase the tax credits was $_____, which is approximately 61.50% of the total cost of the project. *See* Petitioners' Exhibit No. 4.

39. The remaining amount, $_____, was funded by loans.

40. The capital contributed is also the equity in the project, the amount on which the franchise tax is computed.

41. For the Petitioner, the franchise tax using a traditional financing method would be $_____, because the equity is approximately ten percent (10%) of the total project cost, while for the same period the franchise tax using the tax credit financing method, without any allowance, is $_____, because the equity is approximately 61.50% of the total project cost. *See* Petitioners' Exhibit No. 4.

42. Petitioners' Exhibit No. 4 demonstrates that it pays more business franchise tax than conventional rental projects because of its greater capital, due the nature of its financing.

43. The Petitioner contends that the allowances it claims will help alleviate this problem.

44. To demonstrate the its position respecting the allowance provided by W. Va. Code § 11-23-3(b)(2)(E)(i)(III), the Petitioner presented Petitioners' Exhibit No. 5.

45. This exhibit purports to show that the Petitioner has investments and loans primarily secured by mortgages or deeds of trust on residential property in West Virginia of $_____, which is approximately 43.57% of its total assets of $_____.

46. Reducing the Petitioner's average partnership capital of $_____ by the allowance of 43.57%, results in an adjusted or taxable capital of $_____.

47. Multiplying the adjusted or taxable capital by the business franchise tax rate of 7%, yields a business franchise tax of $_____, which is the amount of business franchise tax the Petitioner reported and paid to the State Tax Commissioner. *See* Petitioners' Exhibit No. 5.

48. The State Tax Commissioner maintains that the claimed allowance should be disregarded because the Petitioner did not invest in or make any investments or loans that were secured by mortgages or deeds of trust.

49. Instead, the State Tax Commissioner maintains that the investments and loans for which the Petitioner claims the allowance are, in fact, a debt owed by the Petitioner to a lender which was secured by a deed of trust on its property.

50. The investments and loans which form the basis of the Petitioner's allowance are, in fact, a debt owed by the Petitioner to a lender which was secured by a deed of trust on its property.

51. The witness testified that the figure delineated on Petitioners' Exhibit No. 5 also consists of accrued real estate taxes, deferred developer's fee and accrued interest at year end.

52. Like the loans, accrued real estate taxes, deferred developer's fee and accrued interest are not assets of the partnership, but are liabilities thereof.

53. The Petitioner also presented Petitioners' Exhibit No. 5 to demonstrate its position respecting the allowance provided by W. Va. Code § 11-23-3(b)(2)(E)(i)(I).

54. The Petitioner shows that it has "federal obligations and securities" in the amount of $_____, which is 71.26% of its total assets of $_____.

55. Reducing the Petitioner's average partnership capital of $_____ by the allowance of 71.26%, results in an adjusted or taxable capital of $_____.

56. Multiplying the adjusted or taxable capital by the business franchise tax rate of 7%, yields a business franchise tax of $_____, which is the amount of business franchise tax the Petitioner reported and paid to the State Tax Commissioner. *See* Petitioners' Exhibit No. 5.

57. It is the finding of the West Virginia Office of Tax Appeals that the amount that the Petitioner contends to be "federal obligations and securities," are not tax credits issued pursuant to 26 U.S.C. § 42, but instead are the proceeds from the sale of said tax credits.

58. The assessment results from an adjustment made by the State Tax Commissioner to the Petitioner's business franchise tax returns for the audited periods.

59. The Petitioner originally filed its petition for reassessment solely on the grounds that the allowance was permitted by the provisions of W. Va. Code § 11-23-3(b)(2)(E)(i)(III).

60. Subsequently, upon reviewing the legislative rules governing the business franchise tax, the Petitioner developed an alternative argument, that if the tax credits are not properly viewed as investments or loans permitting the allowance under W. Va. Code § 11-23-3(b)(2)(E)(i)(III), they should be considered obligations or securities of the United States for the purpose of implementing or furthering an objective of national policy, which would be an allowance permitted by W. Va. Code § 11-23-3(b)(2)(E)(i)(I). *See* W. Va. Code St. R. § 110-23-3.4.6.1.a.2.

61. The State Tax Commissioner has waived any right to assert that the Petitioner did not raise this argument in a timely manner.

DISCUSSION

West Virginia Code § 11-23-3(b)(2)(C) provides a definition of the term "capital." As relevant to this matter, it specifically provides the following definition:

> (2) Capital. --- The term "capital" of a taxpayer shall mean:
>
> * * *
>
> (C) Partnerships. --- In the case of a partnership, the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, prepared following accepted accounting

> principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year.

West Virginia Code § 11-23-3(b)(2)(E) provides certain allowances that reduce the amount of the capital of a partnership that is subject to the business franchise tax. Specifically it provides:

> (E) Allowance for certain government obligations and obligations secured by residential property. --- As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:
>
> (i) The numerator of which is the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:
>
> (I) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy; [and]
>
> * * *
>
> (III) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients . . . .
>
> * * *
>
> (ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer as shown on Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

Initially, the Petitioner maintains that it is entitled to an allowance for "investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients." W. Va. Code § 11-23-3(b)(2)(E)(i)(III). The Petitioner maintains that it is entitled to compute the allowance on the loans on which it is the borrower and which are secured by deeds of trust on the property and buildings owned by it. In the opinion of

this Office, the Petitioner is not entitled to the allowance claimed by it under this reasoning. In fact, it appears that this reasoning does not comport with the overarching statutory scheme.

The definition of "capital" is "the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, prepared following accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year." Reviewing the Petitioner's Schedule L, Form 1065, State's Exhibit No. 2, discloses that the total of the partners' capital accounts, or the Petitioner's capital, on which the business franchise tax is levied, is the Petitioner's assets less its liabilities. Those liabilities include the loans secured by deeds of trust against the Petitioner's property. Thus, the loans secured by deeds of trust have already been factored into the determination of the Petitioner's capital.

Accepting the Petitioner's argument would be to permit it to use the loans secured by deeds of trust on its property twice in reducing the taxable capital of the partnership. It would first deduct the loans in computing capital. Then it would be permitted to reduce taxable capital by the percentage that its loans bear to its total assets.[*] This would, to some degree, allow the Petitioner to "deduct" the loans twice in computing its capital. The Legislature could allow the Petitioner to do that if it clearly evinced an intention to do so. However, W. Va. Code § 11-23-3(b)(2)(E) is clear in that the allowance is intended to reduce taxable capital by the percentage of the enumerated assets, not liabilities. Thus, the Petitioner's argument in this issue is without merit.

The Petitioner next takes the position that the tax credits are "obligations or securities of the United States, or of [an] agency, authority, commission or instrumentality of the United

[*] It must be remembered that the loans that the Petitioner for which the Petitioner seeks the allowance are not assets contained in a loan investment portfolio, but are its own liabilities.

States [or] other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy." W. Va. Code § 11-23-3(b)(2)(E)(i)(I). The Petitioner maintains that because the tax credits meet this standard, it is entitled to an allowance for said credits. This allowance, if permitted, would have the effect of reducing the capital of the partnership that is subject to the business franchise tax.

Relevant to the consideration of this issue are the provisions of the applicable legislative rule, W. Va. Code St. R. § 110-23-3.4.6 (April 15, 1992), which provides in relevant part:

> 3.4.6. Allowance for Certain Government Obligations and Obligations Secured by Residential Property. -- As to both corporations and partnerships, capital must be multiplied by a fraction equal to one minus a fraction:
>
> 3.4.6.1. The numerator of which is the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner as obligations, investments and loans are reported on Schedule L of the "Federal Form 1120" or Federal Form 1065) of the following:
>
> 3.4.6.1.a. Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;
>
> 3.4.6.1.a.1. The term "obligation," for purposes of subsection 3.4.6.1.a, means a direct obligation of one of the enumerated entities issued under law for valuable consideration, and includes bonds, notes, certificates of indebtedness, Treasury bills, and interim certificates issued for an obligation. It does not include, for example, an overpayment of federal income tax.
>
> 3.4.6.1.a.2. The term "obligations and securities of the United States or any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy" means securities of any such agency, authority, commission, instrumentality, corporation or entity; or direct obligations of the United States government or any such agency, authority, commission, instrumentality, corporation or entity whereby any such entity is the obligor. Obligations or securities for which the federal government or any such agency, authority, commission, instrumentality, corporation or entity acts as a mere guarantor, rather than the direct obligor, shall not constitute obligations or securities of the United

States or any such agency, authority, commission, instrumentality, corporation or entity for purposes of the West Virginia business franchise tax and these regulations.

3.4.6.1.a.3. Example: Financial instruments issued by private institutions obliged to make timely payment of principal and interest which are guaranteed by a federal agency that pledges the full faith and credit of the United States to guarantee the timely payment of interest and principal if the issuer defaults are not obligations of the United States or any agency, authority, commission or instrumentality of the United States or any corporation or entity created under the authority of the United States Congress. The federal agency bears only a secondary and contingent obligation to pay, and thus is a guarantor rather than an obligor.

* * *

3.4.6.1.c. Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in the State of West Virginia and occupied by nontransients;

3.4.6.1.c.1. The term "residential property" means an abode and dwelling for human habitation intended to be inhabited for a permanent or indeterminate and lengthy period of time. The term does not include hotels, motels, inns, motor inns, lodges and similar short-term lodging accommodations, but does include apartments, condominiums, single family dwellings, multiple family dwellings, apartment complexes, nursing homes and housing developments. This term shall include property primarily used as such an abode and dwelling without regard to whether the property is also used for commercial purposes, so long as it is primarily used as a residence.

3.4.6.1.c.2. The term "nontransient" means natural persons, rather than corporations, who own their residence or who have a lease for their residence which has a primary term of not less than ninety (90) days or such persons who hold a weekly or monthly periodic tenancy or a tenancy at will in their residence but who have resided at the residence for a period of more than eighty-nine (89) days.

* * *

3.4.6.2. The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of the "Federal Form 1120," as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service, or in the case of taxpayers not required to file such schedules or forms with the Internal Revenue Service, the pro forma version thereof. (Emphasis added.)

This Office is of the opinion that the tax credits issued to the Petitioner by the West Virginia Housing Development Fund do not constitute obligations or securities of the United States, or an agency, authority, commission or instrumentality of the United States, or other corporation or entity created under the authority of Congress for implementing or furthering an objective of national policy. Specifically, the tax credits are not obligations or securities. As established by the legislative rule, W. Va. Code St. R. § 110-23-3.4.6.1.a.1 (April 15, 1992), the term "obligation" means a direct obligation of one of the enumerated entities issued under law for valuable consideration, and includes bonds, notes, certificates of indebtedness, Treasury bills, and interim certificates issued for an obligation, but does not include, for example, an overpayment of federal income tax. As a credit against future income tax liabilities, the tax credits issued to the Petitioner in this matter are in the nature of an overpayment of federal income tax. They do not constitute a security, bond, note, certificate or other evidence of indebtedness, which memorializes an obligation that the United States or other identified entity owes to the Petitioner. Thus, the Petitioner is not entitled to an allowance under the provisions of W. Va. Code § 11-23-3(b)(2)(E)(i)(I).

Even if the tax credits were deemed to be a direct obligation or security of the United States, the Petitioner is still not entitled to the claimed adjustment. The tax credits have been distributed to the Petitioner's limited partners, in exchange for contributions to the Petitioner's capital. Having been distributed or sold to the partners, the tax credits are no longer owned by the Petitioner and, as such, no longer make up any portion of the Petitioner's capital. Instead, the limited partners are the owners of the credits and are entitled to use them to offset all or part of their personal tax liabilities for a period of ten years. It is the proceeds raised from the distribution or sale of the tax credits, capital contributions, which constitute a portion of the Petitioner's capital.

The lack of validity of the Petitioner's argument can be shown by comparing it to a situation where ownership of a security that would clearly entitle it to the allowance. For example, if the Petitioner owned Treasury bills, the Treasury bills would constitute a capital asset. Therefore, the Petitioner it would be entitled to the allowance reducing the amount of taxable capital. However, if the Petitioner sold the Treasury bills and retained the proceeds of the sale, the proceeds of the sale it would be a capital asset, not the Treasury bills. Consequently, it would not be entitled to an allowance reducing the amount of its taxable capital. The Petitioner's argument is analogous to a claim that it is entitled to an allowance reducing its taxable capital even though it has sold the security or obligation that entitles it to the allowance. If this were the case, the Petitioner and other similarly situated taxpayers could sell securities or obligations and still be entitled to the allowance reducing taxable capital. Taking this argument to its logical extreme, similarly situated taxpayers could sell a security one to the next, that one to the next, and so on, and each such taxpayer would be entitled to an allowance reducing its taxable capital because it has received proceeds from the sale of the security, even though it no longer owns the security. It is clear that this is not what the Legislature contemplated in enacting this statute.

For the foregoing reasons, the Petitioner is not entitled to the allowance reducing taxable capital permitted by W. Va. Code § 11-23-3(b)(2)(E)(i)(I).

At the hearing in this matter, the witness made a plea that it be granted the allowance because it performs a valuable service with a substantial public benefit by providing low cost housing to those unable to afford market rents. As a result, it has limited cash flow which renders it barely able to meets its other obligations and expenses. The Petitioner argues that the amount it would save on its business franchise tax if it is granted the allowance would be significant to it.

While this Office is mindful of the valuable public service that the Petitioner provides and might well grant the allowance if somehow it was in its discretion to do so, it is constrained by the law as enacted by the Legislature. The express provisions of the law, as currently written, do not permit the Petitioner the allowance that it seeks. If the Petitioner wishes to receive the allowance it seeks, it must seek redress from the Legislature. If, as a matter of policy, the Legislature wishes to grant the Petitioner an allowance, this Office will gladly apply such a statute if called upon to do so.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that the assessment against it is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002].

2. Low-income housing tax credits issued pursuant to Section 42 of the Internal Revenue Code (26 U.S.C. § 42) are neither securities nor obligations as described in W. Va. Code § 11-23-3(b)(2)(E)(i)(I), or the legislative rules promulgated pursuant thereto.

3. The low-income housing tax credits issued to the Petitioner pursuant to Section 42 of the Internal Revenue Code (26 U.S.C. § 42), which were distributed to its limited partners in exchange for funds used to capitalize the partnership, are no longer owned by the Petitioner and, as such, can no longer be considered part of the capital of the Petitioner.

4. Loans to the Petitioner secured by deeds of trust on its property are liabilities netted against its assets in determining its capital, not investments, loans or other assets owned by the Petitioner which are secured by deeds of trust on the property of debtors, and therefore are not entitled to the allowance permitted by W. Va. Code § 11-23-3(b)(2)(E)(i)(III).

5. The Petitioner has failed to carry its burden of showing that the assessment against it is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the business franchise tax assessment issued against the Petitioner for the period of January 1, 2002, through December 31, 2004, for tax in the amount of $_____, and interest in the amount of $_____, updated through February 28, 2006, totaling $_____, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest continues to accrue** on this tax liability until the Petitioner makes full payment of the same.